

fact sheet

employment standards act

HOURS OF WORK & OVERTIME

What is the purpose of the Employment Standards Act, 2000 (ESA)?

The ESA sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

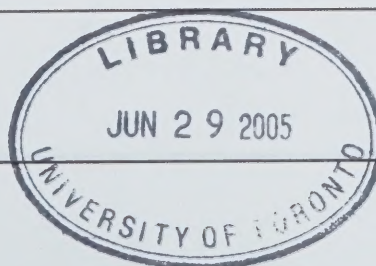
What work is not covered by the ESA?

Most employees and employers in Ontario are covered by the ESA. However, the ESA does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the Ontario Works Act, 1997
- Police officers (except for the Lie Detectors part of the ESA, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the ESA.

For a complete listing of other work categories not governed by the ESA, please check the ESA and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the ESA.



HOURS OF WORK

Do the rules about hours of work apply to everyone?

No. Certain industries and job categories are exempt from the hours of work rules set out in the ESA. Please refer to the "How Are You Covered by the ESA?" Fact Sheet for more information on job-specific exemptions and special rules.

What are the maximum required hours of work for employees?

For most employees in Ontario, the maximum number of hours they can be required to work is:

- eight hours a day,
or
- if the employer has established a regular workday longer than eight hours, then the number of hours in that day,
and
- 48 hours a week.

Can an employee agree to a working arrangement that exceeds the daily maximum hours?

Yes, an employer and an employee can agree in writing that the employee will work more than:

- eight hours a day *or*
- the employer's established regular work day of more than eight hours.

However, these agreements are valid only if prior to making the agreement, the employer gives the employee the **Information Sheet for Employees About Hours of Work and Overtime Pay** prepared by the Director of Employment Standards that describes the hours of work and overtime rules in the ESA, and the employee has acknowledged in the agreement receipt of the Information Sheet.

In addition, agreements to exceed the daily hours of work maximums must still comply with ESA rules about hours free from work and eating periods.

In most cases, an employee who is not represented by a union can cancel an agreement to work excess daily hours by giving the employer two weeks' written notice. An employer can revoke the agreement by giving the employee reasonable notice. However, in some situations an employee who entered into an agreement to work excess daily hours when he or she was hired may be unable to cancel that agreement unless the employer also agrees to cancel it.

Can an employee agree to a working arrangement that exceeds the weekly maximum hours?

Yes, an employer and an employee can agree in writing that the employee will work more than 48 hours a week up to a specified number of hours. However, agreements to work excess weekly hours are not valid unless, prior to making the agreement, the employer gives the employee the **Information Sheet for Employees About Hours of Work and Overtime Pay** prepared by the Director of Employment Standards and the employee has acknowledged in the agreement receipt of the Information Sheet.

Agreements to exceed the weekly hours of work maximums must still comply with ESA rules about hours free from work and eating periods.

In addition, the employer must obtain an approval from the Director of Employment Standards for excess weekly hours. However, if an employer has not received either an approval or a notice of refusal of the application from the Director within 30 days of serving the application for the approval on the Director and has met certain other conditions, the employees who were identified in the application could begin working excess weekly hours. The maximum hours they could work would be the lesser of the number of hours agreed to and 60 hours per work week.

Employers who would like to make an application for an approval for excess weekly hours are required to make their application in a form provided by the Ministry of Labour. The form is available at Ministry of Labour offices. The form is also available on the Ministry's website at: www.gov.on.ca/LAB and can be submitted electronically to the Director of Employment Standards. The Ministry also publishes a guidebook to assist employers who wish to file an application.

An employer who makes an application for excess weekly hours must post a copy of the application in the workplace where it is likely to come to the attention of the employee(s) identified in the application. The application has to be posted on the date the application is served on the Director of Employment Standards and must be kept posted until the Director has either approved the application or refused the application. When the approval or the notice of refusal is received it must be posted in place of the application. A Notice of Refusal must be posted for 60 days from the date it is issued.

Approvals for up to 60 hours per work week expire on the date set out in the approval and the expiry date cannot be more than three years from the date the approval is issued. Approvals for weekly hours in excess of 60 hours per week must have an expiry date not more than one year after the approval is issued.

An employee who is not represented by a union can cancel an agreement to work excess weekly hours by giving the employer two weeks' written notice and an employer can revoke the agreement by giving the employee reasonable notice. Once the agreement is revoked, the employee is not permitted nor can the employee be required to work excess weekly hours even though the employer has an approval from the Director of Employment Standards for excess weekly hours.

Are employees entitled to overtime pay when they have agreed to longer work days or work weeks?

Yes. An employer still has to follow the rules on overtime pay in the ESA and its regulations. An agreement between an employee and an employer to work additional daily or weekly hours, or an approval from the Director of Employment Standards for excess weekly hours, does not excuse employers from paying overtime.

See the *Overtime Pay* section of this fact sheet for more information.

Are there special situations when the usual “hours of work” rules do not apply?

Under exceptional circumstances, an employer may *require* an employee to work:

- more than eight hours per day—or the established regular work day if that is longer, **and/or**
- more than 48 hours per week (or the greater number of weekly hours agreed to and which are the subject of an approval from the Director of Employment Standards), **and/or**
- during a required period free from work. (See *What does the law say about rest periods?* later in this Fact Sheet.)

Employees can be required to work in excess of the limits set out in the ESA and without their consent in exceptional circumstances—but only so far as is necessary to avoid serious interference with the ordinary working of the employer’s establishment or operations, if:

- there is an emergency
- something unforeseen occurs, to ensure the continued delivery of essential public services such as those in hospitals, regardless of who delivers these services
- something unforeseen occurs, to ensure continuous processes or seasonal operations are not interrupted
- urgent repair work to the employer’s plant or equipment is needed.

What does the law say about eating periods?

An employee must not work more than five consecutive hours without getting a 30-minute eating period free from work. The employer does not have to pay for an eating period unless there’s an employment contract that says otherwise.

If the employee and employer agree, the 30-minute eating period can be taken as two shorter breaks within a period of five hours. Together the two eating periods must total at least 30 minutes. Agreements to divide the 30-minute meal break into two shorter breaks do not have to be in writing.

What does the law say about coffee breaks?

An employer is not required to provide any breaks under the ESA other than a 30-minute eating period for every five consecutive hours of work. However, if the employer does provide another type of a break, such as a coffee break, and the employee must remain at his or her workplace during the break, the employee must be paid at least the minimum wage for that time.

What does the law say about rest periods?

Under the ESA, employees are entitled to rest periods, that is, a certain number of hours free from having to work. The right to these rest periods does not apply in exceptional circumstances. (See *Are there special situations when the usual "hours of work" rules do not apply?* earlier in this Fact Sheet.)

Daily:

An employee must receive at least 11 consecutive hours free from performing work each day.

This employment standard applies even if the employer and the employee have agreed in writing that the employee will work additional daily hours, or if the employer has established a regular work day that's longer than eight hours.

This requirement **cannot** be altered by a written agreement between the employer and employee.

The rule does not apply to employees who are on call if they are called in to work during a period when they wouldn't otherwise be expected to perform work.

Between shifts:

Employees must receive at least eight hours off work between shifts.

This employment standard doesn't apply if the total time worked on both shifts isn't more than 13 hours. For example, someone working a split shift in a restaurant wouldn't need to take eight hours off between shifts as long as the total time worked on the two shifts wasn't more than 13 hours, subject to the daily rest requirement of at least 11 consecutive hours.

An employer and employee can also agree in writing that the employee will receive fewer than eight hours off work between shifts, subject to the daily 11 consecutive hours of rest requirement.

Weekly or Biweekly:

Employees must receive at least 24 consecutive hours off work in each work week, or at least 48 consecutive hours off work in every period of two consecutive work weeks.

This requirement **cannot** be altered by a written agreement between the employer and employee.

If an employee works late, is the employer required to provide a ride home?

Employers have no obligation to provide transportation to or from work under the ESA, although individual contracts of employment or a collective agreement may require it.

Do employers have the right to schedule an employee to work an overnight shift alone?

The ESA does not put restrictions on the timing of an employee's shift, other than requirements described in *What does the law say about rest periods?* earlier in this Fact Sheet.

Do employees get paid more for working Sundays, or for working late at night?

Individual contracts of employment or a collective agreement may require it, but the ESA doesn't require premium pay for working Sundays, or late at night.

What happens with agreements to work excess daily and weekly hours that were in place before the law changed on March 1, 2005?

Prior to March 1, 2005, employees and employers could agree to work excess daily and weekly hours up to 60 hours per week and with the approval of the Director of Employment Standards could agree to work more than 60 hours per week.

Daily excess hours agreements entered into before March 1, 2005 continue to be valid agreements subject to the requirement that the employer provide the employee (if he or she is not represented by a union) with the **Information Sheet About Hours of Work and Overtime Pay** prepared by the Director of Employment Standards no later than June 1, 2005.

All excess weekly hours agreements that were entered into under the law as it applied before March 1, 2005 continue to be valid agreements subject to the requirement that the employer provide the employees (if he or she is not represented by a union) with the **Information Sheet About Hours of Work and Overtime Pay** prepared by the Director of Employment Standards no later than June 1, 2005. However, as of March 1, 2005 any Director's approval obtained for an agreement entered into prior to that date ceases to have any effect, unless a "new" approval has been obtained from the Director of Employment Standards. For further details regarding applications for Director's approval see the Employer's Guide to the Application Process.

OVERTIME PAY

Are all employees eligible for overtime pay?

Most employees are eligible for overtime pay, whether they are full-time, part-time, students or casual workers.

But certain industries and job categories are exempt from the overtime rules set out in the ESA, and some job categories have different overtime thresholds. Please refer to the chart in the "How Are You Covered by the ESA?" Fact Sheet for details about job-specific exemptions to the overtime pay rules, and jobs that have a special overtime threshold.

Also, employees not covered by the ESA are not governed by the rules on overtime pay. For more information, see *What work is not covered by the ESA?* in this Fact Sheet.

Do managers and supervisors qualify for overtime pay?

Managers and supervisors don't qualify for overtime pay if the work they do is managerial or supervisory and they perform any non-supervisory or non-managerial tasks on an irregular or exceptional basis.

What is overtime pay?

Overtime pay is at least 1½ times the employee's regular rate of pay (time and a half).

For example, if an employee's regular pay is \$8 an hour then his or her overtime rate is \$12 an hour ($\$8 \times 1\frac{1}{2}$) for every hour worked after 44 in each week.

When does an employee start earning overtime pay?

For most employees, overtime pay is earned after they have worked 44 hours in a work week. Each hour worked after 44 hours must be paid at the overtime rate. Some employees, however, may have jobs where the ESA overtime threshold is more than 44 hours in a work week. For further details refer to the chart in the "How Are You Covered by the ESA?" Fact Sheet.

Is overtime calculated daily?

No. Unless a contract of employment or a collective agreement states otherwise, an employee doesn't earn overtime pay on a daily basis by working more than a set number of hours a day. Overtime is calculated only:

- on a weekly basis, or
- over a longer period under an averaging agreement.

What happens if an employee performs both work that qualifies and work that does not qualify for overtime?

The employee qualifies for overtime if at least half of the hours he or she worked in a work week were in a job that is covered by the overtime provisions in the ESA.

A typical case: Gerard is an employee of a taxi company and is employed as both a cab driver and a dispatcher in the office. A cab driver's work is not eligible for overtime pay, but a dispatcher's work is eligible for overtime pay.

During his work week, Gerard worked 26 hours as a dispatcher and 24 hours driving a cab, for a total of 50 hours. This is six hours over the overtime threshold of 44 hours. Because Gerard spent at least 50 per cent of his working hours that week as a dispatcher, all his hours worked are considered in determining whether he qualifies for overtime pay. Therefore, he qualifies for six hours of overtime pay.

What is an averaging agreement?

An employer and an employee can agree in writing to average the employee's hours of work over a specified period of two or more weeks, for the purposes of calculating overtime pay. Under such an agreement, an employee would only qualify for overtime pay if the average hours worked per week during the averaging period exceed 44 hours. For example, if the agreed period for averaging an employee's hours of work is four weeks, the employee is entitled to overtime only after working 176 hours during the four work weeks (44 hours x 4 weeks = 176 hours). Note that averaging periods cannot overlap one another and must follow one after the other without gaps or breaks.

Where employees are not represented by a union, averaging agreements must contain an expiry date which cannot be more than two years from the date the averaging agreement takes effect. Where the agreement applies to unionized employees, the employer and union may agree to any expiry date. An averaging agreement cannot be revoked by either the employer or employee(s) before its expiry date, unless both the employer and employee(s) agree in writing to revoke it.

In addition to having agreements in writing, the employer must also obtain an approval to average hours for overtime pay purposes from the Director of Employment Standards in order to average hours of work for overtime pay purposes. However, if an employer has not received either an approval or a notice of refusal from the Director within 30 days of serving the application for such an approval on the Director and has met all other conditions as set out in the ESA, the employer may begin averaging employees' hours but only over two-week periods.

An approval to average hours for overtime purposes expires on the date on which the averaging agreement between the employer and employee expires, or on any earlier date specified by the Director in the approval.

The Director of Employment Standards may also unilaterally revoke an approval to average hours of work by providing the employer with reasonable notice.

Employers who would like to make an application for an approval to average hours for overtime purposes are required to make their application in a form provided by the Ministry of Labour. The form is available at Ministry of Labour offices as well as the Ministry's website at: www.gov.on.ca/LAB. The Ministry also publishes a guidebook to assist employers who wish to file an application.

An employer who receives an approval to average hours of work must post a copy of the approval in the workplace where it is likely to come to the attention of the employee(s) identified in the approval and to keep it posted until it expires or is revoked and then remove it.

What happens with agreements to average hours for overtime purposes that were in place before the law changed on March 1, 2005?

Prior to March 1, 2005, employees and employers could enter into averaging agreements for the purposes of determining overtime entitlements but only agreements to average over periods of four weeks or longer required the approval of the Director of Employment Standards. Averaging agreements entered into under the law as it read before March 1, 2005 and that had not expired

or been revoked continued to be valid agreements on and after March 1, 2005. However, as of that date, employers with overtime averaging agreements were required to obtain an averaging approval from the Director of Employment Standards. (Approvals given before March 1, 2005 for averaging agreements for four weeks or longer, were terminated as of February 28, 2005 and a "new" approval is required.)

For further details regarding applications for Director's approval see the Employer's Guide to the Application Process.

Can an employee agree to have paid time off instead of overtime pay?

Yes, if the employee and employer agree in writing. This is sometimes called "banked" time or "time off in lieu."

If an employee has agreed to bank overtime hours, he or she must be given 1½ hours of paid time off work for each hour of overtime worked.

Paid time off must be taken within three months of the week in which it was earned or, if the employee agrees in writing, within 12 months.

If an employee's job ends before he or she has taken the paid time off, the employee must receive overtime pay, no later than seven days after the date the employment ended, or on what would have been the employee's next pay day, whichever is later.

How is overtime pay calculated?

The calculation of overtime pay depends on the particular circumstances, including: how an employee is paid, whether there is a public holiday that week and whether there is an averaging agreement in place.

For more details about how overtime pay is calculated in different cases, see the examples in the next questions.

How is overtime calculated for employees who are paid hourly?

This depends on the particular circumstances. Below is a common situation involving an employee who is paid hourly, demonstrating how overtime pay would be calculated.

Calculating the overtime:

When an employee works overtime in a normal work week with no public holiday

Ravi's regular pay is \$8.00 an hour. His overtime rate (time and a half) is \$12.00 an hour. This week Ravi worked 53 hours. He's in a job where any hours worked after 44 are overtime. So Ravi worked nine hours of overtime ($53 - 44 = 9$).

Ravi's pay for the week is calculated as follows:

Regular pay:	44 x \$8.00	=	\$352.00
Overtime pay:	9 x \$12.00	=	<u>108.00</u>
Total pay:			\$460.00

What if an employee earns a salary, rather than an hourly wage?

Employees on a fixed salary

Generally, if an employee's hours of work change from day to day, but his or her weekly pay stays the same, the employee is paid a fixed salary.

For example, suppose an employee works 44 hours one week and 42 hours the next, but receives the same pay each week. That employee is on a fixed salary.

A fixed salary compensates an employee for *all* non-overtime hours up to and including 44 hours a week. After 44 hours, the employee is entitled to overtime pay.

Calculating the Overtime for Employees on a Fixed Salary

Sharon's salary is \$500.00 a week. She worked 50 hours this work week.

1. First Sharon's regular (non-overtime) hourly rate of pay is calculated:

$$\$500.00 \div 44 = \$11.36$$

Sharon was paid a regular rate of \$11.36 for each hour she worked up to and including 44 hours.

2. Next her overtime rate is calculated:

$$\$11.36 \text{ regular rate} \times 1\frac{1}{2} = \$17.04$$

Her overtime rate is \$17.04 for every hour in excess of 44.

3. Then the amount of overtime she worked is calculated:

$$50 \text{ hours} - 44 \text{ hours} = 6 \text{ hours of overtime}$$

4. Her overtime pay is calculated:

$$6 \text{ hours} \times \$17.04 \text{ an hour} = \$102.24$$

Sharon is entitled to \$102.24 in overtime pay.

5. Finally, Sharon's regular salary and overtime pay are added together:

$$\text{Regular salary:} \quad \$500.00$$

$$\text{Overtime pay:} \quad \underline{102.24}$$

$$\text{Total pay:} \quad \underline{\underline{\$602.24}}$$

Result: Sharon is entitled to total pay of \$602.24.

Employees on a Fluctuating Salary

If an employee has set hours and a salary that is adjusted for variations in the set hours, the employee's salary *fluctuates*.

Calculating the Overtime for Employees on a Fluctuating Salary

For example, Ben is hired on the understanding that he will be paid \$400.00 a week for a regular work week of 40 hours. His salary is adjusted for weeks in which he works either more hours or fewer hours. In this case, Ben is actually receiving a wage based on the number of hours he works.

When the salary fluctuates

Ben's salary is \$400.00 in a regular work week of 40 hours (where the salary isn't adjusted). This week, he worked 50 hours.

1. First Ben's regular (non-overtime) hourly rate of pay is calculated:
 $\$400.00 \div 40 = \10
Ben's regular rate of pay is \$10.00 an hour.
2. Next his regular (non-overtime) earnings are calculated. He is entitled to \$10.00 an hour for all hours up to and including 44 hours a week:
 $\$10.00 \text{ regular rate} \times 44 \text{ hours} = \440.00
Ben's regular earnings for the week are \$440.00.
3. Then his hourly overtime rate is calculated:
 $\$10.00 \text{ regular rate} \times 1\frac{1}{2} = \15.00
His overtime rate is \$15.00 for every hour in excess of 44 hours.
4. The amount of overtime Ben worked is calculated:
 $50 \text{ hours} - 44 \text{ hours} = 6 \text{ hours of overtime.}$
5. His overtime pay is calculated:
 $6 \text{ hours} \times \$15.00 \text{ an hour} = \90.00
Ben is entitled to \$90.00 in overtime pay.
6. Finally, Ben's regular pay and overtime pay are added together:

Regular pay:	\$440.00
Overtime pay:	90.00
Total pay:	\$530.00

Result: Ben is entitled to total pay of \$530.00.

How is overtime calculated for employees paid by piece work rate or commission?

Some employees earn wages that aren't based on the number of hours they work in a week, but instead are paid by the number of pieces they complete, and/or by commissions. These employees must be paid *at least* the equivalent of the minimum wage for each hour worked. They are usually also entitled to receive overtime pay after 44 hours in a work week.

Certain salespersons on commission (other than route salespersons) who receive all or part of their wages as commissions, and who normally make sales away from their employer's place of business—are exempt from (i.e., not covered by) the ESA's overtime provisions.

Calculating the overtime for piecework or straight commission employees

Becka is paid on a piecework basis. Rhian earns straight commissions. They both worked 48 hours this work week and each received a total of \$480.00.

1. First the regular (non-overtime) hourly rate of pay is calculated:
 $\$480.00 \div 44 \text{ hours} = \10.91
Their regular hourly rate of pay is \$10.91.
2. Then the hourly overtime rate is calculated:
 $\$10.91 \text{ regular rate} \times 1\frac{1}{2} = \16.37
Their overtime rate is \$16.37 for every hour in excess of 44 hours.
3. Next, the amount of overtime worked is calculated:
 $48 \text{ hours} - 44 \text{ hours} = 4 \text{ hours of overtime.}$
4. The overtime pay is calculated:
 $4 \text{ hours} \times \$16.37 \text{ an hour} = \65.48
They are each entitled to \$65.48 in overtime pay.
5. Finally, the regular pay and overtime pay are added together:
Regular pay: \$480.00
Overtime pay: 65.48
Total pay: \$545.48

Result: Becka and Rhian are each entitled to total pay of \$545.48.

Can an employee agree not to be paid overtime?

No. An employer and an employee can't agree that the employee will give up his or her right to overtime pay under the ESA.

Is an employer allowed to cut an employee's regular wage to avoid paying overtime?

An employer can't reduce an employee's regular wage to avoid paying time and a half after 44 hours in a work week. For example, if Josée's regular pay is \$12 an hour, her employer can't drop her regular rate to \$8 an hour and then pay her 1½ times \$8 an hour for overtime hours worked.

What if the employer does not follow the ESA?

If an employee thinks the employer is not complying with the ESA, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the ESA.

What if an employee feels he or she has been punished or otherwise penalized for attempting to exercise his or her rights under the ESA?

Employers are prohibited from intimidating, dismissing, penalizing an employee or threatening to do so because the employee has asked the employer to comply with the ESA, has made inquiries about his or her rights under the ESA, filed a complaint under the ESA, exercised or attempted to exercise his or her rights under the ESA, given information to an Employment Standards Officer or participated in any proceeding under the ESA.

If an Employment Standards Officer finds that an employer has punished or otherwise penalized an employee contrary to the ESA, the officer may issue an order to compensate the employee for damages suffered as a result and if the employee was terminated may also issue an order for reinstatement.

This Fact Sheet provides general information about hours of work and overtime as set out in the Employment Standards Act, 2000 (ESA) and its regulations. For complete information, please refer to the ESA and the regulations.

Need More Information?

If you have questions about the Employment Standards Act, 2000 call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the Employment Standards Act, 2000:

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

ESA Fact Sheets are available on the following subjects:

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| <input type="checkbox"/> Agricultural Workers | <input type="checkbox"/> Minimum Wage |
| <input type="checkbox"/> Domestic Workers | <input type="checkbox"/> Pregnancy Leave & Parental Leave |
| <input type="checkbox"/> Emergency Leave | <input type="checkbox"/> Public Holidays |
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| <input type="checkbox"/> Frequently Asked Questions | <input type="checkbox"/> Role of the Ministry of Labour |
| <input type="checkbox"/> Homeworkers | <input type="checkbox"/> Termination of Employment & Severance Pay |
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| <input type="checkbox"/> How Are You Covered by the ESA? | <input type="checkbox"/> What Young Workers Should Know |
| <input type="checkbox"/> How to File a Claim | |

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the ESA can also be found at the Employment Standards Act section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the ESA and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.



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